



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 21, 2011

Mr. Don Cheatham
General Counsel
City of Houston
P.O. Box 368
Houston, Texas 77001-0368

OR2011-08780

Dear Mr. Cheatham:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 421152 (GC No. 18482).

The City of Houston (the "city") received a request for all responses to request for proposals number S17-T23713. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also explain the information may contain third parties' proprietary information subject to exception under the Act. Accordingly, you have notified Motorola Inc. and Dell Marketing Inc. of this request for information and of their right to submit arguments as to why their information should not be released. *See* Gov't Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted information.

Section 552.104 of the Government Code protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Gov't Code § 552.104. The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990).

You state the specified request for proposal ("RFP") was cancelled without any contract awarded. You state the city anticipates re-issuing another RFP with the same or substantially similar specifications and requirements as those in the cancelled RFP. You assert release of the submitted information at this time would harm the city's ability to negotiate and receive a fair contract on the re-issued RFP because bidders will be aware of the amounts in previous bids. You further state release of this information would impair the city's ability to obtain the lowest price possible in the future bidding process. Based on your representations, we conclude the city may withhold the submitted information under section 552.104 of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 421152

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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